IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

INSOLVENCY PETITION NO.36 OF 2002

Re: Kersi Jal Bulsara & anr. ..Debtors.

Ex parte:

Arvindkumra R. Jain .. Petitioning Creditor.

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Mr. Kishore Jain for the Petitioning Creditor.
Debtor absent though served.

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CORAM: DR. D.Y. CHANDRACHUD, J.

19th August, 2006.

P.C. :

1. Based on a decree passed against the debtors by the City Civil Court on 2nd August, 2001 in Summary Suit 4562 of 2000 an insolvency notice was issued on 23rd November, 2001 at the instance of the Petitioning Creditor. Service of the insolvency notice was completed on 28th January, 2002. The debtors failed to pay the amount due as claimed and the act of insolvency was accordingly complete. Accordingly the Insolvency Petition was instituted. On 3rd June, 2003 Debtor No.1 was present in person before this Court and stated that he was willing to pay the decretal

amount by monthly installments of Rs.2,500/-; the first of them commencing from July 2003. This Court directed that if there were any two defaults and the Plaintiffs communicate the said fact to the Insolvency Registrar, the Petition should be placed before the Court for further orders.

2. An affidavit has been filed by the Petitioning Creditor on 11th April, 2005 recording that payments each of Rs.2,500/- were made by the Debtors in July, September and October, 2003 and a payment of Rs.5,000/- was made in December 2003. A cheque of Rs.2,500/- that was furnished on 15th August, 2003 was dishonoured. Save and except for the amount as set out in the affidavit, no further amount was paid by the Debtors. Consequently, consequences envisaged in the order of this Court dated 3rd June, 2003 have ensued upon two defaults having been committed. An order of adjudication would therefore have to be passed. Counsel appearing for the Petitioning Creditor has stated before the Court that Debtor No.1 expired on 29th July, 2004. Section 93 of the Presidency Towns Insolvency Act, 1909 provides that if a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the

Court otherwise orders, be continued as if he were alive. In the present case, Debtor No.1 appeared before the Court after the presentation of the insolvency petition and it was on his statement that a conditional order was passed by the Court on 3rd June, 2003. In these circumstances, it is only just and proper that the insolvency petition be continued as if the First Debtor was alive. There is no reason for the Court to otherwise order. In any event, the estate of the First Debtor is duly represented by the Second Debtor. The Second Debtor has not appeared before the Court. However, in order to furnish a further opportunity to the Second Debtor to pay the amount of the decretal dues and to avoid an order of adjudication, it would be in the fitness of things if a conditional order is further passed permitting the Second Debtor to repay the amounts that are due and payable under the decree within a period of three months from today. In the event that the entire amount is paid within a period of three months, the default which has been committed in complying with the order passed by this Court on 3rd June, 2003 shall stand condoned and the Petition for adjudication shall stand dismissed. However, in the event that the Second Debtor fails and neglects to do so during the time stipulated, the Petition shall stand absolute in terms of prayer

clauses (a) and (b) without further reference to the Court. Counsel appearing for the Petitioning Creditor undertakes to cause a copy of the order to be served upon the Second Debtor within a period of two weeks from today so as to enable the Second Debtor to have a sufficient period of time to comply with the directions.

Certified copy expedited.